

This combination of resources does not teach or suggest an operational fireplace using translucent artificial embers made from fused silica embers to simulate glowing embers. Contrary to the assertions of the Examiner, *Butterfield* does not suggest putting translucent artificial embers in a fireplace that may produce a gas fire. A closer examination of the specification shows that the heating appliance referenced in *Butterfield* column 1 lines 4-8 is not a gas fireplace. *Butterfield* merely teaches a flame simulation device combined with a furnace, whether gas or electric. Specifically, *Butterfield* provides for "a forced air convection unit 6 generally comprising an electric heating element and a fan for passing an air stream over the element." See *Butterfield* column 3 lines 5-8. It would be impossible to combine the flame simulation device of *Butterfield* with the fireplace described in *Butler et al.* The *Butterfield* flame simulation device would burn if combined with *Butler* which teaches away from the combustion of these references. Additionally, *Butler* does not teach a plurality of translucent artificial embers as provided in the Applicant's independent claims. *Butler et al.* simply teaches a single ember pattern 24 with glowing ember patterns 24A deposited thereon. *Butler* does not teach or suggest that its single ember pattern be used in a hot environment and be separable translucent embers.

Further, regarding claims 8, 20, and 22, there is no teaching or suggestion in "Glass" to modify the flame simulation device disclosed by *Butterfield* to produce the simulated electric glowing ember system for fireplaces. Therefore, independent claims 1, 12, 15, 19, 21, 23, 24, and 27 and dependent claims 2, 3, 7, 8, 17-20, 22, and 26, as depending on independent and allowable claims are also in condition for allowance. Applicant respectfully traverses this rejection to the extent that it is maintained.

In sections 4-9 of the Office Action, claims 4-6, 9-11, 13, 14, 16, and 25 were rejected under 35 U.S.C. § 103(a) as being unpatentable over *Butterfield* in view of *Butler* and in further view of various references, including: *Auer*, U.S. Patent No. 1,692,021; *White*, GB 249,321; *Busby et al.*, GB 2 072 832; *Whittaker et al.*, U.S. Patent No. 4,726,351; *Hess et al.*, U.S. Patent No. 5,642,580; and *Rehberg*, U.S. Patent No. 5,195,820. These rejections are respectfully traversed.

As discussed above, independent claims 1, 12, 15, and 24, to which claims 4-6, 9-11, 13, 14, 16 and 25 depend, are allowable over *Butterfield* in view of *Butler*. The Examiner has cited the additional references beyond *Butterfield* and *Butler* to render obvious the additional claim

element(s) added with the dependent claims. Because *Butterfield* and *Butler* do not include all the elements of the independent claims and the additional references do not include the elements recited in independent claims 1, 12, 15, and 24 either, the claims that depend from those independent claims must also be allowable. Claims 4-6, 9-11, 13, 14, 16, and 25 are therefore allowable for at least the same reasons discussed above for the independent claims. Reconsideration and allowance are respectfully requested.

CONCLUSION

In view of the above amendments and remarks, claims 1-27 are in condition for allowance. Reconsideration and allowance are respectfully requested. The Examiner is encouraged to contact the undersigned attorney with any questions regarding this application.

Respectfully submitted,

MERCHANT & GOULD P.C.  
P.O. Box 2903  
Minneapolis, Minnesota 55402-0903  
(612) 332-5300

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Matthew A. Doscotch  
Reg. No. 48,957  
MAD:lmb